

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
CANADIAN PACIFIC RAILWAY, )  
Appellant, )  
vs. )  
PUGET SOUND AIR POLLUTION )  
CONTROL AGENCY, )  
Respondent. )

PCHB Nos. 172 and 183

FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

These matters, the appeals of two \$250.00 civil penalties for two alleged violations of respondent's Regulation I, came before the Pollution Control Hearings Board (Walt Woodward, hearing officer) in respondent's Seattle offices at 3:00 p.m., October 24, 1972.

Appellant was represented by Harry Tyson, manager, marine operations, and Walter J. Phillips, chief engineer of the steamship PRINCESS MARGUERITE, both of Vancouver, British Columbia. Respondent appeared through its counsel, Keith D. McGoffin. Evan Aaron, Seattle court reporter, prepared the transcript.

1 The hearing began as an informal conference. No compromise  
2 settlement appeared possible and the hearing then assumed the status  
3 of a formal hearing. Witnesses were sworn and testified. Exhibits  
4 were admitted.

5 On the basis of testimony heard and exhibits examined, the Pollution  
6 Control Hearings Board prepared Proposed Findings of Fact, Conclusions  
7 and Order which were submitted to the appellant and respondent on  
8 December 21, 1972. No objections or exceptions to the Proposed  
9 Findings, Conclusions and Order having been received, the Pollution  
10 Control Hearings Board makes and enters the following:

11 FINDINGS OF FACT

12 I.

13 The PRINCESS MARGUERITE, a steamship owned by appellant, provides  
14 a daily passenger service between Seattle and Victoria, B.C., from May  
15 to October each year. Ever since the inception of air pollution control  
16 efforts in Seattle in 1966, the vessel has been the subject of alleged  
17 stack emission violations. About three years ago, appellant spent  
18 two hundred thousand dollars on a steam atomization system in an effort  
19 to comply with air pollution standards.

20 II.

21 During 1971 and until July, 1972, respondent issued two Notices of  
22 Violation of respondent's Regulation I against appellant, but did not  
23 assess any civil penalties in connection therewith.

24 III.

25 In the morning of July 19, 1972, while at her Seattle pier prior  
26 her scheduled 8:30 a.m. departure for Victoria, the PRINCESS MARGUERITE

27 FINDINGS OF FACT,  
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emitted white and black smoke from a stack for a period of at least 7½ minutes, said emission being darker in density than No. 2 on the Ringelmann Scale. Respondent served appellant with Notice of Violation No. 5983 and Notice of Civil Penalty No. 332 in the sum of \$250.00 in connection with this incident.

#### IV.

Inexperienced personnel inadvertently may have caused the black smoke emission on July 19, 1972. The light brown smoke noted on August 8, 1972 may have been a regular occurrence as the vessel prepared to leave the pier.

From these Findings, the Pollution Control Hearings Board comes to these

#### CONCLUSIONS

##### I.

The PRINCESS MARGUERITE was in violation of Section 9.03(a) of respondent's Regulation I on July 19, 1972 and on August 8, 1972 while the vessel was at her pier in Seattle, King County.

##### II.

Inexperienced personnel are an understandable cause of air pollution standard violations, but cannot be accepted as mitigation of those violations. Notice of Civil Penalty No. 332, invoked for the July 19, 1972 violation therefore appears to be reasonable, particularly in view of a Notice of Violation served on appellant on June 23, 1972 for which no civil penalty was invoked.

##### III.

The light brown smoke shown in Respondent's Exhibits Nos. 6 and 7

1 in connection with the citation of August 8, 1972 does not appear to be  
2 heavy although it is a technical violation of respondent's Regulation I.  
3 The maximum allowable penalty of \$250.00 therefore appears to be  
4 excessive; \$100.00 might be a more appropriate amount. In this con-  
5 nection, it is suggested that appellant communicate with respondent  
6 relative to the "white" or "brown" smoke which the PRINCESS MARGUERITE  
7 regularly may emit just prior to departure. It may be that appellant may  
8 wish to explore the advisability of seeking from respondent a Variance  
9 to cover this brief morning occurrence if, indeed, it is a relatively  
10 minor infraction difficult to correct.

11 Therefore, the Pollution Control Hearings Board issues this

12 ORDER

13 Notice of Civil Penalty No. 332 in the amount of \$250.00 is  
14 affirmed. Notice of Civil Penalty No. 400 is affirmed in principle,  
15 and is remanded to respondent for the imposition of a penalty more  
16 appropriate to the circumstances.

17 DONE at Olympia, Washington this 6th day of February, 1973.

18 POLLUTION CONTROL HEARINGS BOARD

19 Walt Woodward  
20 WALT WOODWARD, Chairman

21  
22 W. A. GISSBERG, Member

23 James T. Sheehy  
24 JAMES T. SHEEHY, Member

25  
26 FINDINGS OF FACT,  
27 CONCLUSIONS AND ORDER